♦ CHAPTER 6. INSTITUTIONAL STRUCTURE AND ADMINISTRATIVE CONSIDERATIONS

INSTITUTIONAL STRUCTURE

CALFED has not yet determined the institutional structure or entity that will be used to implement the overall CALFED Program or the constituent Ecosystem Restoration Program (ERP). The Bay Delta Advisory Council (BDAC) Assurances and Governance Work Groups have evaluated several different institutional arrangements for implementing the ERP, including:

- a continuation of informal coordination among existing CALFED agencies,
- more formal coordination of state and federal agencies through a Joint Authority, and
- a new non-regulatory agency or organization independent of existing state and federal agencies.

Regardless of the institutional structure, the ERP will not be implemented through the use of regulatory authorities. Rather, the ERP will rely on consensus-based cooperation with local watershed groups and landowners and through transactions with willing sellers only. The ERP will not preempt the existing regulatory authorities of agencies.

Many stakeholders have expressed support for a new entity to implement the ERP rather than existing CALFED agencies, reasoning that a new entity could:

- be more accountable for the success of the ERP;
- help prevent a perceived conflict of interest by separating the restoration of Bay-Delta resources from those agencies responsible for regulating Bay-Delta resources;
- be more efficient with funding and personnel resources because of more centralized funding, implementation, and decision making;
- provide greater opportunity for stakeholder participation in decision making by allowing stakeholder input, and possibly representation, on the ERP decision-making body; and
- help ensure a more scientific basis for decision making by providing independent scientific counsel and oversight more directly to a centralized decision-making body.

These are attractive characteristics of an ERP implementation entity, but it is not yet clear that a new agency or organization will be required to embody these characteristics. Reconfiguring CALFED agency administrative structures and improving interagency coordination may be able to provide greater accountability, efficiency, stakeholder participation and independent scientific oversight. There is also no guarantee that a new agency or organization will perform as planned. Determining the best institutional structure for implementing the ERP will require additional analysis and discussion among CALFED agencies and stakeholders.

Through the Bay Delta Advisory Council (BDAC) Assurances and Ecosystem Restoration Work Groups, CALFED agency personnel and stakeholders have identified some of the critical responsibilities, functions, and powers that will be required to implement the ERP successfully, regardless of the specific institutional structure or entity selected.

To conduct daily operations, the ERP implementation entity will need to perform normal administrative duties, such as the power to:

- hire and dismiss staff

- receive direct funding from both public and private sources
- enter into contracts, and
- disburse grants.

As an agent of environmental restoration and management, the ERP implementation entity will also require more specialized functions, such as the ability to:

- acquire permits,
- serve as lead agency for preparation of environmental documents, and
- acquire, hold, and sell water and property rights.

The institutional structure designed to implement the ERP will include components to help minimize conflict among stakeholders and beneficial uses of Bay-Delta resources. The features include:

- incorporating **PUBLIC INVOLVEMENT** in the planning and decision-making processes during the implementation phase;
- Informing and engaging a broad public in the ERP through a **PUBLIC OUTREACH PROGRAM;**
- Ensuring the scientific credibility of the ERP through **SCIENTIFIC REVIEW**;
- Documenting and disseminating policy and management decisions, and the scientific findings and raw data upon which they are based, through an **INFORMATION MANAGEMENT SYSTEM**; and
- Defining a **DISPUTE RESOLUTION** process to help manage conflict over intractable issues.

PUBLIC INVOLVEMENT

The CALFED process has demonstrated the value of engaging stakeholders in the planning and decision-making processes. After decades of conflict, stakeholders are now working together and with CALFED agencies to develop the long-term, comprehensive plan to restore ecological health and improve water management for beneficial uses of the Bay-Delta system. Though there are still significant points of disagreement among stakeholders and CALFED agencies, this does not detract from the remarkable success achieved thus far in defining points of agreement. The ERP institutional structure will build upon the success of public involvement in the planning phase by providing avenues for public involvement during the implementation phase. For instance, a critical strategy for implementing the ERP is to work with local watershed groups composed of local stakeholders to refine, evaluate, prioritize, implement and monitor restoration actions.

The ERP institutional structure will also explore methods for involving the public in regional planning and decision making, including the use of electronic technology. E-mail services (such as address lists and e-mail reflectors) and Internet services (such as virtual work space in which participants engage in simultaneous writing and review) can be provided for work groups and stakeholders to facilitate collaboration.

PUBLIC OUTREACH

Long-term restoration and management of the Bay-Delta ecosystem requires public support and education. Public funds will finance much of the restoration effort, so it is important that a broad public understands the benefits of ecosystem restoration. And since many human activities affect the health of the Bay-Delta ecosystem, public education will be necessary to help reduce or eliminate ecological stressors.

The public outreach program incorporated into the ERP institutional structure will use both traditional and innovative means for communicating the progress and direction of the ERP to the public. Traditional means will include the production of newsletters, brochures, press releases, and educational kits, as well as media contact.

The public outreach program will also capitalize on electronic technology to reach a broader public and to increase the type of information accessible to the

public. Electronic mailing lists and a website can alert members of the public to meetings and important events. Because reproduction and mailing costs can limit or prohibit the wide distribution of important documents, electronic versions of documents posted to a website will increase the types of information that can be made available.

The public outreach program will also explore more active outreach methods, such as facilitating school visits by ERP decision-makers and scientists and arranging restoration site visits for school and community groups.

Scientific Review

An adaptive management approach to ecosystem restoration and management requires up-to-date science. Ensuring the scientific credibility of the Ecosystem Restoration Program will be an important responsibility of the entity selected to implement it, because it will help maximize the effectiveness of the restoration program and build public confidence and support. A few of the potential mechanisms for ensuring scientific credibility of the restoration program include:

Standing Committee of Independent Scientists

A standing committee of independent scientists could provide scientific review and advice to the ERP implementation entity. A committee composed of recognized experts from the many scientific disciplines associated with the Bay-Delta ecosystem could help to review scientific findings, develop restoration guidelines, establish restoration priorities, design restoration actions to maximize their information value, and identify monitoring and research needs. The participation of the independent scientific committee could include informal advice or formal recommendations.

Peer Review Requirements

The ERP implementation entity can require that the science used to justify CALFED management decisions be published in national, peer-reviewed journals. This approach, used in management of the Everglades and Chesapeake Bay, provides a means of obtaining review from technical experts, free of charge, in a reasonably timely manner. It also helps to assure the quality of the science underlying the restoration program, and it provides important contact with the broader scientific community, which can be useful in establishing review teams. Because publication can take 1-2 years following the initial submission of a manuscript, management decisions will likely need to proceed following internal review by agency scientists or a standing scientific committee.

External Scientific Review

Annual or periodic review of the overall Ecosystem Restoration Program by a panel of scientific experts could help evaluate progress toward restoration goals and infuse the restoration program with new ideas. The panel could also assess the status of the scientific basis for CALFED actions. Experts familiar with other large-scale restoration programs could also provide valuable comparative analysis.

Annual Workshops

The ERP implementation entity will conduct annual (or biennial) public meetings in which resource managers and scientists:

- describe restoration actions implemented during the previous year,
- describe restoration actions to be implemented in the following year,
- present and assess monitoring data and research findings, and
- re-evaluate restoration problems, goals, objectives and actions.

Not every restoration action will be ripe for annual review in a given year. Individual restoration actions will need to be reviewed periodically on a schedule established by the ecological time-scale appropriate to the restoration action. The interval between reviews for an individual action will be based on the time expected for the ecological

process or species to respond to the restoration or management intervention.

The annual public workshops could also help to publicize the restoration program and educate and engage the public.

DISPUTE RESOLUTION

There is a long history of conflict over Bay-Delta resources. CALFED was formed to help reduce the level of conflict in the Bay-Delta system by bringing together state and federal agencies with stakeholder groups in a collaborative planning process. Working together, traditionally combative groups have helped build consensus on the broad program elements that will be necessary to simultaneously resolve the major problems affecting the Bay-Delta system. Many features of the current CALFED planning process will be incorporated into the ERP institutional structure to help prevent or reduce conflict during the implementation phase. For instance, involving the public in ERP decision-making and implementation will allow agency personnel and stakeholders to identify differences of opinion early before they fully develop and become entrenched. Similarly, working with local watershed groups to refine, evaluate, prioritize, and implement restoration actions will help build local consensus. Independent scientific review will help to resolve technical disputes, as will the adaptive management process, which can accommodate alternative hypotheses about ecosystem structure and function.

Despite a fundamental structure designed to reduce conflicts, the ERP institutional structure will need to include a dispute management strategy to address remaining conflicts or new conflicts that emerge. An effective dispute management process can help pre-empt the use of litigation to settle disputes. Litigation commonly forces each side in a dispute to take an extreme position, which can intensify conflict among stakeholders. Dispute resolution provides all parties with lower risk ways of exploring more central positions, and it can provide momentum for building consensus by enumerating points of agreement rather than focusing exclusively on points of contention.

Using a neutral facilitator to conduct the dispute resolution process will help to reduce conflict. Structuring a dispute resolution process less as a formal hearing and more as a professional workshop—with briefings, discussion, and interpretation of the information at issue—will further reduce the combative nature of the dispute.

Although specific approaches to dispute resolution will be dictated by the dispute at hand, the following general guidelines will help structure the dispute resolution process:

- A formal announcement will be made that an issue is being subjected to the dispute resolution process.
- The stakeholders to be included in the process will be identified.
- A formal description and analysis of each stakeholder's position will be provided.
- All of the main decision makers, including agencies with regulatory authority relevant to the dispute, will be identified and included in the process.
- The scope of the issue will be determined clearly.
- The means by which the final recommendation or decision is to be rendered (administrative decision, arbitration, consensus, majority vote, etc.) will be identified.
- Any limits, such as legislative mandates or limits on the delegation of authority, will be identified.

At the conclusion of the dispute resolution process, participants will compile a report identifying points of agreement, remaining points of contention, and an agenda for resolving the remaining issues.

INFORMATION MANAGEMENT SYSTEM

Underlying the public involvement, public outreach, scientific review, and dispute resolution components of the ERP institutional structure is the need for a powerful information management system. An adaptive management approach requires information. Nearly every environmental intervention offers an opportunity (and obligation) to document the ecosystem's prior condition and response to intervention and offers an opportunity to validate or revise hypotheses. Adaptive management also involves continual inventory, analysis, and interpretation of scientific data. An information management system will help collect, store, track and disseminate the decisions and raw data that drive the restoration program.

An information management system will help facilitate public involvement and scientific review by providing access to the information being used to evaluate or justify a proposed action, including not only results and conclusions, but also baseline information, monitoring data, models and their parameters, and assumptions. Participating stakeholders and CALFED agency personnel will be better informed, and individuals and organizations will be able to conduct their own independent analysis of data underlying proposed actions. An information management system could also be used in conjunction with a website to provide access to reports in common use within the CALFED community, including digital copies of printed reports.

An information management system will also be an important component of dispute management by providing common access to the data underlying decisions.

To provide rapid production and dissemination of information, the information management system will rely principally on electronic communication. However, the information management system will also accommodate the information needs of stakeholders who rely upon more traditional means of print communication.

Given the breadth and depth of CALFED issues, GIS is absolutely essential for a number of critical functions, including simple project tracking, database management, monitoring, analysis of connections between actions, and geographic visualization of complex scientific and planning information. The system should link and integrate the map libraries of all CALFED agencies and collaborators, instead of creating a new central repository. Traditional stand-alone GIS operations should be linked through web-based GIS capabilities.